



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Ms. Tracy L. Petrie
City Secretary
City of Mont Belvieu
P.O. Box 1048
Mont Belvieu, Texas 77580

OR95-801

Dear Ms. Petrie:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33119.

The City of Mont Belvieu (the "city") settled a lawsuit filed against it by a former employee. The settlement agreement signed by the city contains a confidentiality clause against disclosing certain settlement terms, including information about the settlement amount.¹ The city received an inquiry about those settlement terms. The attorney representing the city has submitted the following letter to this office stating that:

The compromise and settlement agreement has been fully executed by all parties and has been approved by the Court. The sole and only basis for the City not releasing its copy, as maintained in the files of the City, is the provision of the agreement contained in Exhibit "A" relating to confidentiality.

As City Attorney for the City of Mont Belvieu, I do not oppose the release of the document; however, the litigants, principally the person suing the City, Ruthie Parrish Sager, and her counsel, have insisted upon confidentiality. I question whether or not the

¹From the information provided, it appears that the parties agreed that the city could disclose that it contributed \$5,000 from its general fund toward the settlement amount. Your letter indicates that this information has already been publicly disclosed. The confidentiality clause concerns the disclosure of other financial information concerning the settlement.

confidentiality provision is subject to any of the exceptions in the Texas Government Code and principally, those exceptions contained in *Section 552.107* of the [Government Code]. Since the settlement negotiations have been fully consummated, it would appear that *Section 552.103* providing an exception for litigation or settlement negotiations . . . would not be applicable.

Section 552.103(a) provides that information is excepted from disclosure if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Since the attorney representing the city has no objection to releasing the complete settlement document, it does not appear that there has been a section 552.103(a)(2) determination that the settlement terms should be withheld. Additionally, this office has held that the section 552.103(a) provision concerning "settlement negotiations" does not extend to the final terms of a settlement agreement. Open Records Decision No. 245 (1980) at 2. Therefore, section 552.103(a) is inapplicable to the settlement terms at issue.

Section 552.107(2) provides that information is excepted from disclosure if "a court by order has prohibited disclosure of the information." In Open Records Decision No. 415 (1984) at 2, this office determined that a court order directing that settlement terms be kept confidential would except the information from disclosure under section 552.107(2):

The order of dismissal in this case, which was signed by the judge of the 103rd District Court, expressly provides that "the terms of the settlement shall not be disclosed by the parties or their attorneys." Although we have grave doubts as to whether the judge was authorized to issue an order of this nature, the fact remains that the order is extant. In light of this, we must reluctantly conclude that the requested materials are excepted from required disclosure by section [552.107(2)].

However, our review of the documents at issue indicates that there is no court order requiring that any of the settlement terms be kept confidential.

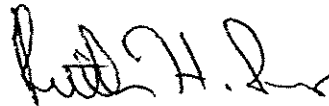
Chapter 552 of the Government Code presumes that all information collected, assembled, or maintained by or for a governmental body as part of its transaction of official business is open to the public. Gov't Code §§ 552.006, .021. The settlement document and terms of the settlement are information subject to the provisions of chapter 552.² A governmental body may not overrule those provisions merely by agreeing to keep information secret. See Attorney General Opinion JM-672 (1987) at 2. Absent express statutory authority, a governmental body has no authority to make an enforceable promise or agreement to withhold information from disclosure. Attorney General Opinion H-258 (1974) at 3.

In any event, the settlement agreement signed by the city provides that "[o]ther than as required by law" the terms of the settlement must be kept confidential. As indicated above, the terms of the settlement are subject to required public disclosure under chapter 552 of the Government Code. The city must therefore release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 33119

Enclosures: Submitted documents

cc: Ms. Cissy Coon
P.O. Box 247
Mont Belvieu, Texas 77580
(w/o enclosures)

²We note that section 552.022(3) specifically provides that information "relating to the receipt or expenditure of public or other funds by a governmental body" is generally public.